

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DONALD R.N. THUILLARD and MARY S.  
THUILLARD,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. CV-04-0368-FVS

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS AND TO  
AMEND CAPTION AND DENYING  
PLAINTIFFS' REQUESTS FOR THE  
DISCLOSURE OF DOCUMENTS

**THIS MATTER** comes before the Court on Defendants' motion to dismiss Plaintiff Donald R.N. Thuillard and to amend the caption by removing U.S. Customs and Border Security (Ct. Rec. 81) and Plaintiffs' requests for the disclosure of documents (Ct. Rec. 120, 124). Plaintiffs are proceeding pro se. Defendants are represented by Andrew S. Biviano.

**I. BACKGROUND**

Plaintiff Mary Thuillard was a Senior Customs Inspector for the United States Customs Service (now U.S. Customs and Border Protection) ("Customs") in Frontier, Washington from February 1994 to February 2003. In the Fall of 2000, Customs received information that at some time in 1998 Mrs. Thuillard may have allowed printer ink to enter the United States without payment of proper Customs duties and/or fees. Before Internal Affairs completed its investigation, on April 10, 2002, a federal grand jury indicted Mrs. Thuillard in the United

1 States District Court in the Eastern District of Washington. The  
2 indictment charged Mrs. Thuillard with fraudulently and knowingly  
3 concealing and facilitating the transportation of merchandise (ink)  
4 imported contrary to law, in violation of 18 U.S.C. §§ 545 and 2.

5 Pursuant to its own regulations, Customs suspended Mrs. Thuillard  
6 indefinitely. Customs also suspended its administrative investigation  
7 pending a final determination in the criminal case. Mrs. Thuillard  
8 appealed Customs' decision to indefinitely suspend her to the Merit  
9 Systems Protection Board ("MSPB"), but on her request, the hearing was  
10 dismissed without prejudice and with leave to refile, pending the  
11 resolution of the criminal case. On September 9, 2002, the district  
12 court dismissed the indictment against Mrs. Thuillard.

13 Shortly thereafter, Customs returned Mrs. Thuillard to pay  
14 status, but then placed her on administrative leave while it  
15 considered whether further administrative action or investigation was  
16 warranted. On February 4, 2003, Customs' Internal Affairs agents  
17 interviewed Mrs. Thuillard in an attempt to determine whether she had  
18 violated the U.S. Customs Code of Conduct. On February 5, 2003, Mrs.  
19 Thuillard submitted a letter of resignation.<sup>1</sup> Thereafter, Mrs.  
20 Thuillard filed no further claim or complaint with the MSPB. In  
21 August 2003, Mrs. Thuillard submitted a Claim for Financial Damages  
22 with Customs. That claim was denied on April 5, 2004.

23 Plaintiffs, Donald and Mary Thuillard, filed this action against  
24 Defendants, alleging its supervisors and agents maliciously prosecuted

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26 <sup>1</sup>Plaintiffs acknowledge Mary Thuillard resigned, but they  
allege she resigned "under extreme duress and harassment designed  
to force her to resign."

1 Mrs. Thuillard and thereafter maliciously and wrongfully pursued an  
2 administrative investigation. Specifically, Mrs. Thuillard alleges  
3 she was falsely and unfairly accused of misconduct arising from her  
4 employment and unfairly interrogated by Customs over those allegations  
5 of misconduct. Plaintiffs also appeared to assert additional causes  
6 of action for defamation, malicious harassment, false accusation, and  
7 wrongful discharge. Further, Plaintiffs' Amended Complaint asserted  
8 additional claims for constructive discharge and emotional distress.  
9 (Ct. Rec. 33). Plaintiffs allege they have suffered financial  
10 difficulties and they seek (1) monetary compensation in the amount of  
11 \$28,578,600.00, (2) a letter acknowledging that Mrs. Thuillard's  
12 employer took inappropriate actions, (3) a correction to Mrs.  
13 Thuillard's employment records reflecting that she "retired" instead  
14 of "resigned", and (4) Mrs. Thuillard's old badge to be returned to  
15 her mounted on a plaque. (Ct. Rec. 1).

16 On January 26, 2006, the Court entered an order that granted  
17 Defendants' September 21, 2005 motion to dismiss and closed the file.  
18 (Ct. Rec. 58). Plaintiffs subsequently appealed, and the Ninth  
19 Circuit affirmed in part and reversed in part. (Ct. Rec. 74). The  
20 Ninth Circuit concluded that the Court erred by dismissing Plaintiffs'  
21 malicious prosecution claim. Accordingly, Plaintiffs' sole remaining  
22 allegation is that Customs' supervisors and agents maliciously  
23 prosecuted Mary Thuillard.

24 On March 28, 2008, Defendants moved to dismiss Plaintiff Donald  
25 R.N. Thuillard due to a lack of standing. (Ct. Rec. 81). Defendants  
26 also requested that the case caption be amended to remove any

1 reference to U.S. Customs and Border Security. (Ct. Rec. 81).  
2 Plaintiffs filed a response in opposition (Ct. Rec. 103) and  
3 Defendants filed a reply brief (Ct. Rec. 104).

## 4 **II. DISCUSSION**

### 5 **A. Donald R.N. Thuillard**

6 The jurisdiction of a federal court is limited to actual cases  
7 and controversies. U.S. Const. art. III, § 2, cl. 1. In order for  
8 the Court to have subject matter jurisdiction over a case, a litigant  
9 must establish proper standing to sue. *See Simon v. Eastern Kentucky*  
10 *Welfare Rights Org.*, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48  
11 L.Ed.2d 450 (1976). If the Court finds that it lacks subject matter  
12 jurisdiction, it shall dismiss the action. Fed. R. Civ. P. 12(h)(3).

13 At its "irreducible constitutional minimum," standing requires  
14 proof of three things. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,  
15 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (citations omitted).  
16 "First, the plaintiff must have suffered an 'injury in fact' . . . ."  
17 *Id.* (citations omitted). "Second, there must be a causal connection  
18 between the injury and the conduct complained of -- the injury has to  
19 be 'fairly traceable to the challenged action of the defendant, and  
20 not the result of the independent action of some third party not  
21 before the court.'" *Id.* at 560-61, 112 S.Ct. at 2136 (quoting *Simon*,  
22 426 U.S. at 41-42, 96 S.Ct. at 1926, 48 L.Ed.2d 450) (internal  
23 punctuation omitted). "Third, it must be likely, as opposed to merely  
24 'speculative,' that the injury will be 'redressed by a favorable  
25 decision.'" *Id.* at 561, 112 S.Ct. at 2136 (quoting *Simon*, 426 U.S. at  
26 38, 43, 96 S.Ct. at 1924, 1926).

1 Plaintiffs' complaint does not allege or suggest that Mr.  
2 Thuillard was harmed by Defendants in a personal and individual  
3 manner. (Ct. Rec. 1). In fact, Mr. Thuillard is not even mentioned  
4 in the body of Plaintiffs' complaint. (Ct. Rec. 1). It is  
5 uncontested that Mr. Thuillard was not prosecuted and that Mr.  
6 Thuillard did not suffer a direct injury as a result of the  
7 prosecution of Mrs. Thuillard. Furthermore, Plaintiffs concede that  
8 Mr. Thuillard did not file a separate claim because "the calculations  
9 of losses were all inclusive in Mrs. Thuillard's Claim." (Ct. Rec.  
10 103 at 3).

11 While Mr. Thuillard contends that his particularized injury is  
12 the loss of Mrs. Thuillard's income which resulted in an inability to  
13 pay life insurance premiums and the ultimate loss of the life  
14 insurance policy (Ct. Rec. 103 at 1-2), Plaintiffs fail to present  
15 persuasive legal authority to support their assertion that a family  
16 member of a person alleging malicious prosecution has standing to sue  
17 in his or her own right. The only legal support cited by Plaintiffs  
18 is a case from the United States District Court in the Central  
19 District of Massachusetts. (Ct. Rec. 103 at 2-3). In that case, the  
20 district court awarded the wives of men who were wrongly imprisoned  
21 damages for intentional infliction of emotional distress and for loss  
22 of consortium. Aside from being non-binding case law, the  
23 Massachusetts District Court case is inapposite because Mr. Thuillard  
24 has not raised a claim for loss of consortium in this case.

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1 The burden of proving subject matter jurisdiction rests upon  
2 Plaintiff, the "party invoking the federal court's jurisdiction."  
3 *Thompson v. McCombe*, 99 F.3d 352, 353 (9<sup>th</sup> Cir. 1996). Plaintiffs'  
4 remaining claim in the instant action is that Customs supervisors and  
5 agents maliciously prosecuted Mary Thuillard. Mr. Thuillard only  
6 seeks relief as a spouse of the allegedly maliciously prosecuted  
7 Plaintiff, Mary Thuillard. Donald R.N. Thuillard has failed to  
8 demonstrate he has standing in this action. Therefore, Plaintiff  
9 Donald R.N. Thillard shall be dismissed from this lawsuit.

10 ***B. Caption Change***

11 Defendants additionally request that the Court amend the case  
12 caption to remove "United States Customs and Border Security," which  
13 would result in the properly named Defendant, the United States of  
14 America, being the sole defendant named in the caption of this case.  
15 (Ct. Rec. 81).

16 The Federal Torts Claims Act does not authorize suits against  
17 federal agencies. 28 U.S.C. 2679(a). Although Customs has been a  
18 named party to this action and has been listed in the caption of all  
19 pleadings since October 2004, the proper defendant is the United  
20 States of America, not the United States Customs and Border Security,  
21 pursuant to the Federal Torts Claims Act. Furthermore, Plaintiffs'  
22 response in opposition to removing United States Customs and Border  
23 Security from the caption is not convincing. (Ct. Rec. 103 at 5).  
24 Accordingly, the caption shall be amended to reflect the appropriate  
25 defendant in this case, the United States of America. The United  
26 States Customs and Border Security shall be removed from the caption.

1           **C.    Plaintiffs' Motions to Compel**

2           On July 23 and 29, 2008, Plaintiffs filed requests for the  
3 disclosure of documents. (Ct. Rec. 120, 124). These requests for  
4 disclosure are construed as motions to compel.

5           Plaintiffs are advised to review paragraph five of the Scheduling  
6 Order (Ct. Rec. 80), the Federal Rules of Civil Procedure and the  
7 Local Rules for the Eastern District of Washington. Plaintiffs have  
8 failed to comply with Fed. R. Civ. P. 37(a)(2)(A) and LR 37.1(b) which  
9 require the parties to meet and confer in an attempt to resolve their  
10 differences prior to requesting court action. Moreover, Plaintiffs  
11 failed to follow LR 7.1, which governs motion practice, by neglecting  
12 to file a separate memorandum setting forth the points and authorities  
13 relied upon in support of the motion.<sup>2</sup>

14           Based on the foregoing, Plaintiffs' motions to compel (Ct. Rec.  
15 120, 124) are denied at this time, with leave to renew, if necessary,  
16 following a conference by the parties in accordance with Fed. R. Civ.  
17 P. 37(a)(2)(A) and LR 37.1(b). Plaintiffs are directed to file all  
18 future motions in accordance with the Federal Rules of Civil Procedure  
19 and this Court's local rules.

20           The Court being fully advised, **IT IS HEREBY ORDERED as follows:**

21           1. Defendants' Motion to dismiss Plaintiff Donald R.N. Thuillard  
22 from this lawsuit (**Ct. Rec. 81**) is **GRANTED**.

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24           <sup>2</sup>"A failure to timely file a memorandum of points and  
25 authorities in support of or in opposition to any motion may be  
26 considered by the Court as consent on the part of the party  
failing to file such memorandum to the entry of an Order adverse  
to the party in default." LR 7.1(h)(5); LR 7.1(b).

3. The Clerk District Court Executive is directed to **AMEND** the caption in this case to remove the United States Customs and Border Security. All future filings in this case shall reflect the appropriate defendant, the United States of America.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to enter this order and furnish copies to counsel.

s/Fred Van Sickle  
Fred Van Sickle  
Senior United States District Judge